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CASE LAW ON UNCITRAL TEXTS (CLOUT)

User guide

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I. Scope and purposes of the information system

1. Based on a decision by the United Nations Commission on International Trade Law ("UNCITRAL") at its twenty-first session in 1988 (A/43/17, paras. 98-109), the Secretariat has established a system for collecting and disseminating information on, court decisions and arbitral awards relating to Conventions and Model Laws that have emanated from the work of the Commission. The acronym for the system is "CLOUT" ("Case law on UNCITRAL texts").

2. The purpose of the system is to promote international awareness of such legal texts elaborated or adopted by the Commission, to enable judges, arbitrators, lawyers, parties to commercial transactions and other interested persons to take decisions and awards relating to those texts into account in dealing with matters within their responsibilities and to promote the uniform interpretation and application of those texts.

3. At present, the following legal texts are covered by the system:

- Convention on the Limitation Period in the International Sale of Goods (New York, 1974), and as amended by the Protocol of 1980

- United Nations Convention on Contracts for the International Sale of Goods (Vienna, 1980)

- UNCITRAL Model Law on International Commercial Arbitration (1985)

- United Nations Convention on the Carriage of Goods by Sea, 1978 (Hamburg)

- United Nations Convention on Independent Guarantees and Stand-by Letters of Credit (New York, 1995)

- UNCITRAL Model Law on Procurement of Goods, Construction and Services (1994)

- UNCITRAL Model Law on Electronic Commerce (1996)

- UNCITRAL Model Law on Cross-Border Insolvency (1997).

4. The system will also cover the following, and any future, Conventions and Model Laws when they enter into force or are implemented by States:

- United Nations Convention on International Bills of Exchange and International Promissory Notes (New York, 1988)

- United Nations Convention on the Liability of Operators of Transport Terminals in International Trade (Vienna, 1991)

- UNCITRAL Model Law on International Credit Transfers (1992).

5. The system relies on a network of national correspondents designated by those States that are parties to a Convention or have enacted legislation based on a Model Law (hereinafter referred to as "implementing States"). A list of national correspondents, which is regularly updated (under the identifying symbol: A/CN.9/SER.C/Correspondents/1) will be made available to the public upon individual request. The national correspondents monitor and collect court decisions and arbitral awards, and prepare abstracts of those considered relevant in one of the official languages of the United Nations (i.e., Arabic, Chinese, English, French, Russian, Spanish). The Secretariat stores the decisions and awards in their original language. The abstracts are translated by the Secretariat into the other five United Nations languages and are published in all six languages as part of the regular documentation of UNCITRAL (under the identifying symbol: A/CN.9/SER.C/ABSTRACTS/...). Documents containing abstracts are published whenever a sufficient number of abstracts has been received to justify the cost of publication. The abstracts are thus published at irregular intervals.

6. It should be noted that, in view of the nature of the system, neither a national correspondent nor anyone else directly or indirectly involved in the operation of the system assumes any responsibility for errors or omissions that may occur in relation to any aspect of the system or its execution.

II. Collection of decisions and awards

7. The system aims at decisions and arbitral awards that are relevant to the interpretation or application of an UNCITRAL legal text. This includes those decisions and awards that interpret or apply a specific provision or provisions, as well as those that do not refer to a specific provision but relate to the legal text in general. For instance, decisions to the effect that a text is not applicable to the case at hand would be included.

8. The primary task of national correspondents is to collect decisions issued by courts of their respective implementing States. National correspondents may also collect other relevant decisions or awards, including those relating to a national law that is closely modelled on the text of a Convention elaborated by UNCITRAL even if the State is not party to the Convention. Ordinarily, only final decisions of courts and arbitral tribunals are being collected; where a decision that is subject to appeal or review is included in the collection, the abstract would indicate that the decision is subject to appeal or review. Where there is both an appellate decision and a decision by a lower court, the preparation of an abstract of the decision by the lower court will not be considered a priority. However, where the reasoning at both levels is of legal value to the interpretation of an UNCITRAL legal text, abstracts may be prepared in respect of both decisions.

9. Special considerations apply to the collection of arbitral awards. The accessibility of arbitral awards varies considerably and is, as a rule, rather limited. Often, their availability is restricted by requirements of confidentiality. Their accessibility may also be restricted by the general usage of an arbitral institution. The availability of awards issued by tribunals in arbitration proceedings that are not administered by an arbitral institution is likely to be even more limited. Thus, arbitral awards are included in the collection only in so far as they come to the attention of national correspondents and in the form in which they are made available to them.

10. Generally, the complete court decision or arbitral award, in its original language, is forwarded to the Secretariat. In exceptional cases, however, a certain portion of a decision or arbitral award will be omitted for reasons, for example, of confidentiality (in such cases a "sanitized" decision or arbitral award might be provided to the Secretariat) or of a lack of relevance to an UNCITRAL text of the portion omitted, or because the portion is not available to the national correspondent.

11. The Secretariat stores the decisions and awards in the form in which they are forwarded to the Secretariat by the national correspondents. They are made available in that form, subject to possible copyright restrictions, to any interested person for individual use upon request and against payment of a fee covering the cost of copying and mailing (see below, paras. 20-25).

III. Structure and purpose of abstracts

12. Each abstract bears a case number, based upon the order in which the abstracts are published, irrespective of the legal text to which the decision or award relates or of the country of its origin. After the case number, the provisions of the relevant convention or model law dealt with in the decision or award are listed, using the short title presented in the list of short titles in the annex to this guide (e.g., "CISG 1(1)(a),(b); 99(6); 100(2)").

13. Thereafter, further identification data is given, indicating the court or arbitral tribunal, the date of the decision or award, the names of the parties where these are available and any other means of identifying the decision or arbitral award using the official or customary means of expressing that data in a given jurisdiction.

14. Reference is also made to the source from which a decision or award that has been published was obtained. If the decision or award included in the collection is a copy of the original decision or award, the notation "original" will be given. If the decision or award is taken from a publication, the notation is "published in: ...". After the reference to the source, the language of the decision or award is indicated.

15. Finally, additional information is given on the following points: the author of the abstract where the author of the abstract is a person other than the national correspondent of the country of origin; whether the original case is stored by the Secretariat in any form other than paper form, including any reference to its storage in any outside data base; references to reproductions of the decision or arbitral award subsequent to its original issuance or publication; any translation of the decision or award into languages other than its original language; and published notes or commentaries specifically on the decision or award. Any later publications on the decision or arbitral award are referenced in subsequent documents under the original case number. It may be noted that generally, in references to publications, abbreviations of such publications are not used.

16. The abstracts are intended to provide sufficient information to enable readers to decide whether it is worthwhile to obtain and examine the complete decision or arbitral award that is the subject of the abstract. They are usually no longer than one-half of a page, in view of the expected large number of decisions and arbitral awards to be collected and of the costs of publishing the abstracts. Exceptions may be made where a decision or award is particularly complex or deals

with several provisions of the relevant UNCITRAL text. In view of the necessity for brevity, the substantive part of the abstract is ordinarily not a complete summary of the full decision or award, but should suffice as a "pointer" to the specific issues concerning the application and interpretation of the relevant UNCITRAL text in a given decision or arbitral award.

17. Guided by that purpose, the following points are usually included in an abstract: the reasons for applying or interpreting the provision of the UNCITRAL text in the way that it is interpreted, including any specific reliance on a principle or other provision of that text, on previous case law or on relevant contract clauses and particular facts; the claim or relief sought by the claimant and any other factor describing the procedural context within which the case was decided; the countries of the parties and the type of trade or other transactions involved.

IV. Publication of indices

18. With a view to enhancing the usefulness of the system, the Secretariat intends to publish separate indices for the UNCITRAL legal texts covered by the system. To date, the Secretariat has published one index that covers the abstracts of decisions concerning the United Nations Convention on Contracts for the International Sale of Goods (CISG) (Vienna, 1980) (under the identifying symbol: A/CN.9/SER.C/INDEX/.../). Consolidated revisions of this index and any other indices that are to be produced, are to be reprinted depending on the number of abstracts relating to a given UNCITRAL legal text.

19. Each index is based on a classification scheme ("thesaurus" as prepared by the Secretariat) that follows the order of the provisions of the respective text, with additional sub-categories of issues where appropriate. It lists under those provisions and sub-categories the case number of any relevant, previously published abstract, with an indication of the country of origin and of the year of the decision or award. In this way, a person interested in the application or interpretation of a given provision or any term used therein would be able to trace all relevant abstracts. It also includes a list of case abstracts by jurisdiction.

V. Possible copyright restrictions and confidentiality

20. As indicated above (para. 11), all decisions and arbitral awards stored by the Secretariat will be made available to the public upon individual request, subject to any copyright restrictions attendant to the decisions and awards. The national correspondents have been requested to inform the Secretariat of any restrictions existing in their jurisdictions that would prevent the reproduction of the full texts of court decisions or arbitral awards. Where, exceptionally, the source or publisher of the original decision or award does not allow the distribution of copies of the original decision to the public, the Secretariat would not make available any copy of the original case. The abstract would indicate the prohibition and refer the user to the source of publication of the case.

21. Arbitral awards stored by the Secretariat will be made available to the public upon individual request, subject to any requirements of confidentiality attendant to the awards. The National correspondents have been requested to inform the Secretariat of the existence of any confidentiality agreements concerning the arbitral awards that would prevent the reproduction of the texts of such awards.

22. Copyright protection is sought for the abstracts and the indices from the United Nations Publications Board in accordance with the United Nations regulations governing copyright in United Nations publications. Every publication of such materials bears a copyright notice.

23. As stated in the copyright notice, Governments and governmental institutions may reproduce or translate the copyrighted material without permission, but are requested to inform the United Nations of such reproduction or translation. All requests by others for permission to reproduce or translate copyrighted publications or parts thereof should be referred to the Secretary of the United Nations Publications Board, United Nations Headquarters, New York, N.Y. 10017. Before deciding on such requests, the Publications Board normally consults with the UNCITRAL Secretariat. The national correspondents and the UNCITRAL Secretariat, when advising the Publications Board, are guided by the objectives of the information system to provide worldwide awareness of the application of UNCITRAL legal texts and are thus favourably disposed to requests for reproducing or translating abstracts or indices.

VI. Administrative procedures for individual CLOUT-users

24. As indicated above (para. 11), copies of decisions and arbitral awards available to the public are sent to interested persons upon request, against a fee covering the cost of copying and mailing. The fee, which depends on the type of copy sought, is determined by the Secretariat. Additional charges are made for any requested fax transmission or use of a courier service.

25. For administrative reasons, the Secretariat prefers not to levy such fees or charges for each individual request. Therefore, it is suggested that users of the system, when making their first request for copies, make a down payment of sixty (60) US dollars and, once that amount is exhausted, an additional down payment and so forth. To reduce administrative costs, payment by electronic transfer (either to our US$ or Austrian Schilling (ATS) account) is preferred, which should specify very clearly that the funds are for purposes of a CLOUT subscription as follows:

our US$ account is:

The Chase Manhattan Bank
New York, New York 10081
Bank Code (ABA number): 021000021
Account number: 001-1-505302
Account holder: United Naitons Office at Vienna
Reference: CLOUT Subscription

our ATS account is:

Bank Austria
1010 Vienna
Bank Code (BLZ): 20151
Account number: 690030200
Account holder: United Nations Office at Vienna
Reference: CLOUT Subscription

In addition, users will be required to comply with any copyright restrictions as to the use of the copies and other materials.

26. The subscription-type procedure outlined in the previous paragraph accords to any person or entity complying therewith the status of a "CLOUT-user" with the following additional benefits. CLOUT-users receive all documents that are published as part of the system and generally distributed only to Governments, international organizations, depository libraries and similar recipients of United Nations documents. CLOUT-users thus directly receive all installments of the

series of abstracts as well as the indices on all UNCITRAL legal texts covered by the system. In addition, they receive any information on changes in the system and similar information on points of interest to them. Additional administrative details on how to obtain the CLOUT publications may be obtained by writing to the UNCITRAL Secretariat at the following address:

UNCITRAL Secretariat
Vienna International Centre
P.O.Box 500
A-1400 Vienna
Austria

Telefax: (43 1) 26060 5813
Telex: 135612 uno a
Telephone: 26060-4061
E-mail: uncitral@uncitral.org

VII. Internet address

27. All published abstracts, indices and other information in connection with CLOUT are also available at the following UNCITRAL website: http://www.uncitral.org

Annex

Abbreviations and short titles for UNCITRAL legal texts

CISG	United Nations Convention on Contracts for the International Sale of Goods (Vienna, 1980) (Short title: United Nations Sales Convention)
CLP (74)	Convention on the Limitation Period in the International Sale of Goods (New York, 1974)
CLP	Convention on the Limitation Period in the International Sale of Goods (New York, 1974, as amended by Vienna 1980 Protocol) (Short title: Limitation Convention)
CLOT	United Nations Convention on the Liability of Operators of Transport Terminals in International Trade (Vienna, 1991) (Short title: Terminal Operators Convention)
HR	United Nations Convention on the Carriage of Goods by Sea, 1978 (Hamburg) (Short title: Hamburg Rules)
IGSL	United Nations Convention on Independent Guarantees and Stand-by Letters of Credit (1995)
MAL	UNCITRAL Model Law on International Commercial Arbitration (1985) (Short title: UNCITRAL Model Arbitration Law)
MEC	UNCITRAL Model Law on Electronic Commerce (1996)
MIC	UNCITRAL Model Law on International Credit Transfers (1992) (Short title: UNCITRAL Credit Transfer Law)
MOCI	UNCITRAL Model Law on Cross-Border Insolvency (1997)
PGCS	UNCITRAL Model Law on Procurement of Goods, Construction and Services (1994)
UAR	UNCITRAL Arbitration Rules (1976)
UBNC	United Nations Convention on International Bills of Exchange and International Promissory Notes (New York, 1988) (Short title: UNCITRAL Bills and Notes Convention)
UCR	UNCITRAL Conciliation Rules (1980)